



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.             | CONFIRMATION NO.            |
|--|-------------|----------------------|---------------------------------|-----------------------------|
| 10/536,771   | 12/27/2005  | Peter L. Fraenkel    | 11226/008                       | 2877                        |
| 27879 7590 01/31/2008<br>INDIANAPOLIS OFFICE 27879<br>BRINKS HOFER GILSON & LIONE<br>ONE INDIANA SQUARE, SUITE 1600<br>INDIANAPOLIS, IN 46204-2033 |             |                      |                                 |                             |
|  |             |                      | EXAMINER<br>LOPEZ, FRANK D      |                             |
|  |             |                      | ART UNIT<br>3745                | PAPER NUMBER                |
|  |             |                      | NOTIFICATION DATE<br>01/31/2008 | DELIVERY MODE<br>ELECTRONIC |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentofficeactions@brinkshofer.com  
svessely@usebrinks.com  
dhasler@usebrinks.com

**Advisory Action**  
**Before the Filing of an Appeal Brief**

Application No.

10/536,771

Applicant(s)

FRAENKEL, PETER L.

Examiner

F. Daniel Lopez

Art Unit

3745

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 15 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 13-16 and 18-25.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/F. Daniel Lopez/  
Primary Examiner  
Art Unit: 3745

## Continuation of 3. NOTE:

The new limitations "a second fluid coupling between an outlet of the hydraulic motor and an inlet of the plurality of first pumps" (e.g. claim 13 line 11-13) with "a third fluid coupling between an outlet of the header tank and the inlet of the plurality of first pumps" (e.g. claim 13 line 21-23); and "pressure plenum coupling the plurality of first pumps to the first fluid coupling" (e.g. claim 15 line 3-4) are new issue requiring further consideration (see also discussion below). The second and third couplings seem to indicate (in part based on Appellant's arguments) that they are separate couplings, but they are not; the second and third couplings have a part in common. .

## Continuation of 11. does NOT place the application in condition for allowance because:

Appellant argues that there is no reason to combine Cros and Hoppe, since their operating environments are so distinct, that the operating principle of Cros would change. Appellant refers to the differences in how the pumps are driven; that Cros has a closed hydraulic system whereas Hoppe has the capability of an open system; and that Hoppe does not disclose a Pelton wheel.

The examiner disagrees with this. The differences in how the pumps are driven do not affect the teachings concerning the hydraulic circuit, in this case. Appellant's statement that Hoppe has the capability of an open system is confusing, since the system (fig 3) is a closed hydraulic system, just like the hydraulic system of Cros. A Pelton wheel is understood to be a turbine motor, and therefore the disclosure of a turbine is synonymous with a Pelton wheel.

Appellant argues that the coupling between the header tank and the inlet to the pumps is a third coupling, in addition to the second coupling between the outlet of the motors and the inlet of the pumps; and therefore there are 2 potential sources of water for the pumps, whereas there is only 1 source in Hoppe. This argument is confusing. The instant invention discloses the third coupling (40) coupled to the second coupling (34), not to inlet of the pumps. The argument concerning the potential sources appears to be semantic. Both the instant invention and Hoppe have 2 potential sources, the outlet of the motor and the seawater pumped into the system.

It would appear that Appellant is trying to claim the location of the header tank, which was not previously claimed. If so, this is a new issue requiring further search and/or consideration..